IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3129 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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J S SHETH AND OTHERS
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS SNEHA A JOSHI for the petitioners

Mr Falguni Patel, AGP for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/09/2006

ORAL JUDGMENT:

By filing this petition the petitioners have challenged the action of the respondents in not giving appointment to the petitioners to the post

of Technical Assistant. The case of the petitioners is that the petitioners have got ITI Certificate in the trade of Draughtsman (Civil) and subsequently they got their names registered with the employment exchange. The petitioners were called for the interview for the post of Technical Assistant, as per the interview call letter, which is at Annexure-A. The petitioners were thereafter informed by letter dated 13.7.1982 that the question of appointment to the post of Technical Assistant in the pay scale of Rs.290-480 is required to be referred to the State Government. The petitioners were therefore asked to inform whether they were willing to be absorbed on the post of Survey Mistri, which is in the pay scale of Rs.260-400. In the said letter it is mentioned that in future in case if any sanction is given by the State Government needful maybe done for Technical Assistant post. It is not in dispute that the present petitioners gave the consent to be absorbed on the post of Survey Mistry, which was in the pay scale of Rs.260-400. Accordingly, all these petitioners were appointed on the post of Survey Mistri and they resumed their service. However, in the year 1983 by office order No.1219 which is at page No.17 at Annexure-D it seems that the Department has recruited about 27 people on the post of Technical Assistant, which prompted the petitioners to start ventilating their grievance for appointing them on the said post as according to the petitioners, the petitioners are also holding the same qualifications which the aforesaid 27 people are holding. The petitioners contended that they are also holding the qualification of SSC and Draughtsman (Civil) yet they have not been given the scale of Technical Assistant. The petitioners therefore filed the petition with a prayer that the Department maybe directed to absorb the petitioners on the aforesaid post of Technical Assistant in the pay scale of Rs.290-480.

Learned advocate Ms Joshi vehemently submitted that when the Department has absorbed similarly situated 27 employees on the post of Technical Assistant even though they have not undergone 18 Months Surveyor's Training Course, the petitioners should have been appointed as Technical Assistant as they are holding the same qualifications.

The petition is resisted by the Department and affidavit-in-reply has been filed by Executive Engineer, Water Resources Investigation Division, Himatnagar. The affidavit-in-reply is at page 27 wherein in paragraph 4 it is stated that the petitioners were appointed to the post of Survey Mistrys and, therefore, they are not entitled to get the post of Technical Assistant in view of the consent letter which they have given. It is also stated that the petitioners are also even otherwise not entitled to get the post of Technical Assistant as in order to get the appointment to the said post, candidate is required to pass 18 months Surveyor's Course from the ITI. It is also pointed out that the petitioners have not passed 18 months Surveyor's Course from ITI and, therefore, they are not eligible to be appointed to the said post. Along with the reply a Resolution of 17th November 1959 is produced on record. As per the same, a candidate who has passed 18 Months Surveyor's Course from the Industrial Training Institute, Aundh Camp, Pune is held to be eligible for being appointed on the post of Technical Assistant. By the said Resolution the other institutions are also prescribed i.e. Industrial Training Institute, Ahmedabad, Nagpur, Jamnagar, Aurangabad and Bombay.

It is not in dispute nor it is denied by Ms Joshi, learned advocate for the petitioners that the petitioners have not undertaken the 18 months' Surveyor's Course as per 1959 Resolution. Since the petitioners

have not passed the Course from a recognised ITI, they were not rightly given the appointment on the said post. The petitioners have passed Draughtsman Course (Civil) but not the aforesaid course of 18 months' Surveyor's Course. Considering the aforesaid aspect, in my view, it cannot be said that the Department has committed any error in not appointing the petitioners on the post of Technical Assistant. Learned AGP, Ms Patel has submitted that by oversight and bona fide mistake if other persons are given appointment on the post of Technical Assistant, petitioner cannot get benefit of the same as even if any illegality is committed through oversight, it will not give any right to the petitioners for being appointed on the post of Technical Assistant. It is not in dispute that the petitioners have not undertaken the 18 months' Surveyor's Course. As per 1959 resolution the petitioners were not qualified to be appointed on the said post. Apart from that, as back as on 13.7.1982 the petitioners gave consent for being appointed as Survey Mistry and they have clearly stated that they are willing to be absorbed on the said post and they have no objection for being appointed on the said post. Thereafter, simply because some employees were recruited, may be contrary to rules in the year 1983, it cannot give any fresh right in favour of the petitioners for being appointed on the post of Technical Assistant. In fact, the petitioners have not approached the Court immediately and filed the petition after about four years i.e. in the year 1987. It is not their case that the petitioners were eligible for being appointed as Technical Assistants, yet they were subjected to discrimination. The petitioners, therefore, having accepted the appointment as Survey Mistry now cannot make any grievance that they should have been recruited or absorbed on the post of Technical Assistant.

In view of the aforesaid discussion, there is no substance in the petition. Hence, the same is dismissed. Rule is discharged. No order as to costs.

(P.B.Majmudar, J.)

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